GOH KEAT PENG

v.

PP

HIGH COURT MALAYA, KUALA LUMPUR
ZULKEFLI AHMAD MAKINUDIN J
[CRIMINAL APPLICATION NO: 44-27-2000]
13 APRIL 2001

CRIMINAL PROCEDURE: *Charge - Defective charge - Failure to state specific offence - Whether accused prejudiced - Whether charge bad in law - Criminal Procedure Code, s. 152(3)*

CRIMINAL PROCEDURE: *Consent or sanction - Consent in writing - Failure to refer to specific provision - Whether consent in writing defective - Police Act 1967, ss. 27C, 27(5A), (5B), (5C)*

In this motion seeking the court to exercise its revisionary powers to deal with the arrest case involving the accused ('the applicant'), preliminary objections were raised on two issues, namely that the consent to prosecute and the charge preferred against the applicant were defective. The objections were dismissed. Hence this application.

Held:

[1] The court sitting as the High Court has the powers of revision in respect of criminal proceedings and matters in subordinate court as provided under ss. 31 and 35 of the Courts of Judicature Act 1964 read together with s. 323(1) of the Criminal Procedure Code. The court therefore has a wide range of revisionary powers in the interest of justice to deal with the matters of issues raised by the applicant in this application.

[2] The consent in writing of the Public Prosecutor was issued under s. 27(5) of the Police Act 1967 ('the PA'). However a close look at the provision of s. 27(5) of the PA would show that there is more than one distinct offence provided by the said s. 27(5). In fact there are 15 distinct offences in s. 27(5) alone. Therefore the consent to prosecute issued by the Deputy Public Prosecutor issued under s. 27C(1) of the PA is defective and bad in law because the said consent did not specifically and accurately state which of the offences under s. 27(5) of the PA the applicant had been charged. The applicant in the circumstances of the case had been prejudiced in the preparation of his defence because he did not know whether the provisions of s. 27(5A), (5B) or (5C) would apply or not to his case.

[2a] Section 27C(1) of the PA clearly requires the said consent of the Public Prosecutor to be stated in writing. The defect in the said consent to prosecute cannot be cured with the presence of the Deputy Public Prosecutor who prosecutes the applicant for the offence under section 27(5) of the PA. The provisions of the Criminal Procedure Code are not applicable when there are specific provisions in the Police Act 1967.

[3] The charge failed to state clearly and specifically which of the offences provided under s. 27(5) of the PA the applicant had been charged with. The words used in the charge framed were very wide in their terms and the applicant could not know which of the 15 offences under s. 27(5) of the PA as hereinbefore classified was said to have been committed by the applicant.

[3a] In the circumstances the applicant would have been prejudiced in the preparation of his defence as he would not have known whether the provisions of ss. 27(5A), (5B) or (5C) of the PA would apply to his case. The charge therefore did not comply with the requirement of s. 152(3) of the Criminal Procedure Code and was therefore bad in law.

[Application allowed.]

Case(s) referred to:
Abdul Hamid v. PP [1956] 22 MLJ 231 ***(refd)***
Datuk Mahinder Singh v. PP [1987] 2 CLJ 39 ***(refd)***
Emperor v. Lachiram I LR 28 Bom 553 ***(refd)***
Liaw Kwai Wah v. PP [1987] 1 CLJ 35 ***(refd)***
Loy Chin Hei v. PP [1981] CLJ 177 ***(refd)***
PP v. Chai Chong Yin & Anor [1983] 1 MLJ 267 ***(refd)***
PP v. Cheah Beng Poh & Ors [1984] 1 CLJ 117 ***(refd)***
PP v. Chew Siew Luan [1982] CLJ 354 ***(refd)***
PP v. Margarita B Cruz [1988] 1 MLJ 539 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 31, 35(1)
Criminal Procedure Code, ss. 152(3), 323(1), 376(3)
Dangerous Drugs Act 1952, ss. 39B(1)(a), (b), (c), (3), 41B
Police Act 1967, s. 27C(1), (2), (3), (4), (4A), (5), (5A), (5B), (5C)
Prevention of Corruption Act 1961, s. 26(1)

For the applicant - Wong Kian Kheong (Adlin Abdul Majid with him); M/s Lee Hishammuddin
For the respondent - Zauyah Be Loth Khan (Jagjit Singh with her); DPP

Reported by Mariette Peters-Goh

JUDGMENT

Zulkefli Ahmad Makinudin J:

Preliminary

This is essentially a motion seeking to move the court into exercising its revisionary powers to deal with the arrest case No. E83-1330-99 filed before the Magistrate Court at Kuala Lumpur whereby in that case the applicant as an accused person had been charged for an offence under s. 27(5) of the Police Act 1967 ("the Act"). Before the learned trial magistrate counsel for the applicant had on 28 February 2000 raised a preliminary objection on two issues namely that the consent to prosecute and the charge preferred against the applicant are defective. The learned trial magistrate dismissed both the issues of preliminary objection. The trial of the applicant before the said Magistrate Court had been stayed pending the decision of this court in this application. The applicant now seek from this court the following orders:

(i) that the record of proceedings before the said Magistrate Court be called for and examined for the purpose of this honourable court satisfying itself as to the correctness, legality or propriety of the finding made by the learned magistrate on 28 February 2000 in relation to the consent in writing of the Public Prosecutor to prosecute an offence under s. 27C(1) of the Act and the charge preferred against the applicant under s. 27(5) of the Act;

(ii) that the finding of the learned magistrate be set aside;

(iii) that the applicant be discharged not amounting to acquittal; and

(iv) other orders or reliefs this honourable court deem fit and proper.

This application is supported by the affidavit of the applicant, Goh Keat Peng ("the affidavit") and is made on the following grounds:

(i) that the consent in writing of the Public Prosecutor to prosecute an offence under s. 27C(1) of the Act as shown in exh. "GKP14" of the affidavit is defective as it does not state specifically which of the offences provided by s. 27(5) of the Act the Public Prosecutor had consented in writing for the applicant to be prosecuted therein.

(ii) That the charge framed against the applicant as shown in exh. "GKP5" of the affidavit is defective as it does not particularise and state specifically which of the offences provided by s. 27(5) of the Act the applicant had been charged and in the result the applicant had been prejudiced in the preparation of his defence.

Revisionary Powers Of The Court

It is clear that this court sitting as the High Court has the powers of revision in respect of criminal proceedings and matters in subordinate court as provided under s. 31 of the Courts of Judicature Act 1964 which states as follows:

> The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.

Section 35(1) of the Courts of Judicature Act 1964 further provides as follows:

> (1) In addition to the powers conferred on the High Court by this or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interest of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding whether civil or criminal, in any subordinate court, call for the record thereof and may remove the same into the High Court or may give to the subordinate court such directions as to the further conduct of the same as justice may require.

The provisions of ss. 31 and 35 of the Courts of Judicature Act 1964 as regards the revisionary powers of the High Court will have to be read with s. 323(1) of the Criminal Procedure Code ("CPC") which provides as follows:

> (1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality and propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate court.

Based on the above provisions of the law this court therefore has a wide range of revisionary powers in the interest of justice to deal with the matters or issues raised by the applicant in this application.

Defect Of The Consent In Writing Of The Public Prosecutor And Failure Of The Public Prosecutor To Adequately Consider The Offences Under Section 27(5) Of The Act

Mr. Wong Kian Kheong, the learned counsel for the applicant argued before me in the context and background that can be briefly summarised as follows:

(i) the consent in writing of the Public Prosecutor is required under s. 27C(1) of the Act.

(ii) the said consent in writing issued against the applicant did not state specifically which of the offences provided by s. 27(5) of the Act the applicant had been charged.

(iii) the Public Prosecutor did not adequately consider the applicant's case when issuing the said consent in writing because the consent in writing did not state specifically which of the offences provided by s. 27(5) of the Act the applicant had been charged.

(iv) the defect in the said consent in writing issued by the Public Prosecutor against the applicant cannot be cured under the law.

Section 27C(1) of the Act *inter alia* provides as follows:

> A prosecution for an offence under section 27 or 27A shall not be instituted except with the consent in writing of the Public Prosecutor ...

It is clear that the consent in writing of the Public Prosecutor is required for the prosecution of an offence under s. 27 of the Act. The applicant does not dispute the fact that such consent in writing has been issued by the Public Prosecutor. However the applicant contended that the said consent had not been issued in accordance with the requirement of the law.

The key or the essential words under s. 27C(1) of the Act are the words "A prosecution for an offence under s. 27 ...". The provision of s. 27C(1) of the Act as regards the requirement of consent in writing of the Public Prosecutor to be issued for the prosecution of an offence under the Act was introduced by the Amendment Act A685 to the Act which came into force with effect from 8 January 1988. I am of the view that from the choice of words used in s. 27C(1) of the Act Parliament must have intended that there is a requirement for the Public Prosecutor to specify in the said consent which of the offences under s. 27 of the Act the accused is being charged. In this respect I find the nature of the wordings used in other laws or Acts where a consent or a sanction of the Public Prosecutor is required to prosecute an offence are not worded in the same form as found in s. 27C(1) of the Act. In the Dangerous Drugs Act 1952 the consent of the Public Prosecutor under s. 39B(3) is worded in the following words:

> (3) A prosecution under this section shall not be instituted except by or with the consent of the Public Prosecutor.

Therefore it can be seen that under the Dangerous Drugs Act 1952 it refers to the words "a prosecution under this section" and not "a prosecution for an offence" as in the said Police Act 1967. It is also my view that under the Dangerous Drugs Act 1952 the words "a prosecution under this section" carry with it a very loose meaning in that the Public Prosecutor need not specify in the consent any distinct offence under s. 39B(1)(a), (b) or (c) of the said Act because the consent issued need only refers to a prosecution under the relevant section of the said Act. Furthermore under the Dangerous Drugs Act

1952 it does not require that the consent to be issued is to be in writing unlike the provision of s. 27C(1) of the Act which specifically states that the consent of the Public Prosecutor issued must be in writing. Under s. 26(1) of the Prevention of Corruption Act 1961 (Act 57) which has been revoked by the Anti-Corruption Act 1997 the consent of the Public Prosecutor to prosecute an offence is worded in the following words:

> (1) A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

Again it can be seen that under the said Prevention of Corruption Act 1961 the consent of the Public Prosecutor only refers to a prosecution under the Act and not a prosecution for an offence under the relevant section of the Act as found under 27C(1) of the Police Act 1967. Under the said Prevention of Corruption Act 1961 it also does not state that the consent of the Public Prosecutor must be in writing.

For the purpose of assisting us in dealing with the two issues raised by the applicant it is necessary to reproduce the provision of s. 27(5) of the Act in full as follows:

> (5) Any assembly, meeting or procession -
>
> (a) which takes place without a license issued under subsection (2); or
>
> (b) in which three or more persons taking part neglect or refuse to obey any order given under subsection (1) of subsection (3),
>
> shall be deemed to be an unlawful assembly, and all persons attending, found at or taking part in such assembly, meeting or procession and, in the case of an assembly, meeting or procession for which no license has been issued, all persons attending, found at or taking part or concerned in convening, collecting or directing such assembly, meeting or procession, shall be guilty of an offence.

The offence creating provisions in s. 27 of the Act are found in ss. 27(4), 27(4A) and 27(5) of the Act. Section 27(4) states that any person who disobeys any order given under sub-s. (1) or sub-s. (3) of s. 27 shall be guilty of an offence. Section 27(4A) states where any condition of a license issued under sub-s. (2) of s. 27 is contravened the licensees shall be guilty of an offence. Puan Zauyah Be, the learned DPP submitted that there are three distinct offences under s. 27 of the Act as provided in ss. 27(4), 27(4A) and 27(5). With that submission I take it that the learned DPP contended that under s. 27(5) of the Act there is only one distinct offence. The learned DPP further submitted that there is no requirement under the said Act that the material particulars of the offence must be specifically stated or particularised in the consent. The case of *PP v. Chai Chong Yin & Anor.* [1983] 1 MLJ 267 was cited as an authority for the said proposition. With respect to the learned DPP's

contention that s. 27(5) of the Act provides one distinct offence I could not agree with her. A close look at the provision of s. 27(5) of the Act would show that there is more than one distinct offence provided by the said s. 27(5). Section 27(5) of the Act is a special provision because it is not only an offence creating provision but it also contained a deeming provision as to what constitutes an act of unlawful assembly under the Act. The definition of "unlawful assembly" given by s. 27(5) of the Act is as follows:

> An assembly, meeting or procession which takes place without a license issued under subsection (2) of section 27 of the Police Act 1967 or an assembly, meeting or procession in which three or more persons taking part neglect or refuse to obey any order given under subsection (1) or subsection (3) of section 27 of the Police Act 1967.

The learned counsel for the applicant submitted that if one examines closely the whole provision of s. 27(5) and reading it with the relevant ss. 27(1), 27(2) and 27(3) of the Act one will find that in the said s. 27(5) there are fifteen distinct offences and not one offence as contended by the learned DPP. Bearing in mind what has been defined as unlawful assembly under the said s. 27(5) I am in agreement with the learned counsel for the applicant that if we refer to the various different *actus reus* or circumstances spelt out in the said s. 27(5) there are 15 distinct offences made up of the following:

(1) the offence of attending an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the first offence");

(2) the offence in which a person is found at the assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the second offence");

(3) the offence of taking part in the assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the third offence");

(4) the offence of taking part in convening an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the fourth offence");

(5) the offence of taking part in collecting an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the fifth offence");

(6) the offence of taking part in directing an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the sixth offence");

(7) the offence of concerned in convening an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the seventh offence");

(8) the offence of concerned in collecting an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the eighth offence");

(9) the offence of concerned in directing an assembly, meeting or procession which takes place without a license issued under sub-s. (2) of s. 27 of the Police Act 1967 ("the ninth offence");

(10) the offence of attending an assembly, meeting or procession in which three or more persons taking part neglect or refuse to obey any order given under sub-s. (1) of s. 27 of the Police Act 1967 ("the tenth offence");

(11) the offence in which a person is found in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s. (1) of s. 27 of the Police Act 1967 ("the eleventh offence");

(12) the offence of taking part in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s. (1) of s. 27 of the Police Act 1967 ("the twelfth offence");

(13) the offence of attending an assembly, meeting or procession in which three or more persons taking part neglect or refuse to obey any order given under sub-s. (3) of s. 27 of the Police Act 1967 ("the thirteenth offence");

(14) the offence in which a person is found in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s. (3) of s. 27 of the Police Act 1967 ("the fourteenth offence") and

(15) the offence of taking part in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s. (3) of s. 27 of the Police Act 1967 ("the fifteenth offence").

The above contention that there could be a classification of 15 distinct offences provided under s. 27(5) of the Act is fortified by the fact that the provisions of s. 27(5A), 27(5B) and 27(5C) of the Act are only applicable in reference to specific offences as provided under the said s. 27(5) of the Act. It is

therefore necessary to refer to the provisions of ss. 27(5A), 27(5B) and 27(5C) of the Act to show the justification as to why there is a need to state specifically in the said consent in writing of the Public Prosecutor which of the offences provided by s. 27(5) of the Act the applicant had been charged. Section 27(5A) of the Act states as follows:

> (5A) In any prosecution for an offence under subsection (5) of attending, being found at or taking part in an assembly, meeting or procession which is an unlawful assembly, it shall not be a defence that the person charged did not know that the assembly, meeting or procession was an unlawful assembly or did not know of the facts or circumstances which made the assembly, meeting or procession an unlawful assembly.

It would appear that s. 27(5A) of the Act provides that it shall not be a defence under the first to the third offences and under the tenth to the fifteenth offences as hereinbefore classified that the person charged did not know that the assembly, meeting or procession was an unlawful assembly or did not know of the facts or circumstances which made the assembly, meeting or procession an unlawful assembly. It is clear therefore that the provision of s. 27(5A) of the Act does not apply for the fourth to the ninth offences as hereinbefore classified. Section 27(5B) of the Act states as follows:

> (5B) In any prosecution for an offence under subsection (5) of attending or being found at an assembly, meeting or procession which is an unlawful assembly, it shall be a defence that the presence of the person charged came about through innocent circumstances and that he had no intention to be otherwise associated with the assembly, meeting or procession.

Therefore according to the provision of s. 27(5B) of the Act any person attending or being found at an assembly, meeting or procession which is an unlawful assembly can rely on a defence that the presence of the person charged came about through innocent circumstances and that he had no intention to be otherwise associated with the assembly, meeting or procession. Section 27(5B) of the Act would appear to be applicable only to the first, second, tenth, eleventh, thirteenth and the fourteenth offences as hereinbefore classified. A perusal of the provision of s. 27(5C) of the Act would further show that the said section creates a rebuttable presumption only for the fourth to the ninth offences as hereinbefore classified. Section 27(5C) of the Act states as follows:

> (5C) For the purposes of subsection (5), where it appears from all the circumstances relating to an assembly, meeting or procession that it was convened, collected or directed by or with the involvement, participation, aid, encouragement, support or connivance of an organisation, every member of the governing body of the organisation shall be deemed to have taken part or been concerned in convening, collecting or directing the assembly, meeting or

> procession unless he proves that he did not know nor had any reason to believe or suspect that the assembly, meeting or procession was going to take place or, if he knew or had reason to believe or suspect as aforesaid, he had taken all reasonable steps to prevent the assembly, meeting or procession from taking place or, if it was not reasonably within his power to so prevent, he had publicly objected to or dissociated himself from the convening, collecting or directing of the assembly, meeting or procession.

Based on the provisions of ss. 27(5A), 27(5B) and 27(5C) of the Act it could be seen that there is a distinction amongst the offences as provided under s. 27(5) of the Act. It is also observed that a person who is not present in an "unlawful assembly" can also be charged under the fourth to the ninth offences as hereinbefore classified.

The consent in writing of the Public Prosecutor issued under s. 27C(1) of the Act against the applicant as shown by the exh. "GKP14" only states as follows:

> ... saya, AZAHAR BIN MOHAMED, Timbalan Pendakwa Raya, dengan ini memberi izin bagi pendakwaan penama-penama seperti disenaraikan dalam lampiran yang dikembarkan kerana kesalahan di bawah seksyen 27(5) Akta Polis 1967 ...

I am of the view that having analysed the provision of s. 27(5) read with the provisions of ss. 27(5A), 27(5B), 27(5C), 27(1), 27(2) and 27(3) of the Act the consent to prosecute issued by the Public Prosecutor under s. 27C(1) of the Act in the case of the applicant is defective and bad in law because the said consent does not specifically and accurately state which of the offences under s. 27(5) of the Act the applicant had been charged. The applicant in the circumstances of the case had been prejudiced in the preparation of his defence because he does not know whether the provision of ss. 27(5A), 27(5B) and/or 27(5C) of the Act would apply or not to his case.

Looking at the consent in writing of the Public Prosecutor issued for the applicant in this case as in exh. "GKP14" I am of the view that the Public Prosecutor had not given a full and adequate consideration of the applicant's case when issuing the said consent. This is so because having found that there are 15 distinct offences that can be committed by the applicant under s. 27(5) of the Act as hereinbefore classified the Public Prosecutor should state in the said consent specifically which of the offences under s. 27(5) of the Act the applicant had been charged. There is a great difference between a sanction to prosecute and a consent to prosecute. On this point His Lordship Justice Smith in the case of *Abdul Hamid v. PP* [1956] 22 MLJ 231 had this to say at p. 232:

> There is an essential difference to my mind between a sanction and a consent. A prosecution can be sanctioned without any deep consideration of the particular case. **Full consideration is required for consent since "consent" is an act of reason, accompanied with deliberation**, the mind weighing, as in a balance, the good and evil on each side. (emphasis added).

Defect Of The Consent In Writing Of The Public Prosecutor Not Curable Under The Law

Section 27C(1) of the Act requires the consent of the Public Prosecutor to be in writing. In the case of *Datuk Mahinder Singh v. PP* [1987] 2 CLJ 39, whereby it concerned a sanction in writing of the Public Prosecutor his Lordship K.C. Vohrah J had this to say at p. 40:

> With regard to the matter of sanction, it will be noted that the sanction of the Public Prosecutor (Solicitor General or a Deputy Public Prosecutor) is required to be a "previous" sanction and that has, *inter alia*, to be in writing (see subsection (iii) of section 129 of the Criminal Procedure Code), clearly nullifying the argument of the learned Deputy Public Prosecutor that the said officer had sanctioned the prosecution of the offences named in section 129 of the Code.

Similarly, in the present case notwithstanding the presence of the learned Deputy Public Prosecutor to prosecute the applicant I am of the view that the provision of s. 27C(1) of the Act clearly requires the said consent of the Public Prosecutor to be stated in writing. The defect in the said consent to prosecute as shown in exh. "GKP14" cannot be cured with the presence of the learned Deputy Public Prosecutor who prosecutes the applicant for an offence under s. 27(5) of the Act. It must be emphasised here that the provisions of the Criminal Procedure Code ("CPC") are not applicable when there are specific provisions in the Police Act 1967. On this point I would like to refer to the provision of s. 3 of the CPC which states as follows:

> All offences under the Penal Code shall be enquired into and tried according to the provisions hereinafter contained, and all offences under any other law shall be enquired into and tried according to the same provisions: **Subject however to any written law for the time being in force regulating the manner or place of enquiring into or trying such offences**. (emphasis added)

In the present case before this court there is a specific provision in relation to the requirement of obtaining the consent in writing of the Public Prosecutor to prosecute an offence under s. 27(5) of the Act. In the circumstances it is my view that the general doctrine of "alter ego" under s. 376(3) of the CPC does not apply and the presence of the learned Deputy Public Prosecutor to prosecute the applicant will not cure the defect of the said consent to prosecute as in exh. "GKP14". On this point I would like to refer to the two cases of

Loy Chin Hei v. PP [1981] CLJ 177 and *PP v. Chew Siew Luan* [1982] CLJ 354 which involved the provisions regulating the granting of bail under the Dangerous Drugs Act 1952. In both the above cited cases the court took the view and decided that the provision in CPC relating to bail does not apply having regard that there is a specific provision regulating the granting of bail under the said Dangerous Drugs Act 1952. In these two cases the court decided that the restriction on bail under s. 41B of the Dangerous Drugs Act 1952 is absolute and neither the court below nor the High Court has power to admit to bail any person charge thereunder with any offence punishable with death or more than five years imprisonment or even for lesser terms when the Public Prosecutor certified that it is against the public interest to allow bail.

Defect In The Charge Framed Against The Applicant

Having perused the charge as shown in exh. "GKP5" of the affidavit it is also my finding that the said charge is defective on the ground that it does not comply with the requirement of s. 152(3) of the CPC. The said charge failed to state clearly and specifically which of the offences provided under s. 27(5) of the Act the applicant had been charged. Section 152(3) of the CPC provides *inter alia* as follows:

> ... so much of the definition of the offence must be stated so as to give the accused notice of the matter with which he is charged.

It has earlier been established that there are 15 distinct offences that can actually be committed by the applicant under the provision of s. 27(5) of the Act. The charge as in exh. "GKP5" of the affidavit only states as follows:

> Bahawa kamu ... telah didapati berada dalam satu perhimpunan haram (unlawful assembly) dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 27(5) Akta Polis 1967 ...

The above charge framed against the applicant can be compared and contrasted with the charge as framed in the case of *Pendakwa Raya v. Cheah Beng Poh & Ors.* [1984] 1 CLJ 117 whereby in that case the High Court held *inter alia* that the charge neither contains any element extraneous to nor omits any element from s. 27(5) of the Act. The accused person was therefore not misled or in any way prejudiced by the charge. The charge in that case reads as follows:

> ... That you ... did take part in an unlawful assembly, to wit, an assembly in a public place for which no license has been issued under the provisions of section 27(2) of the Police Act (No. 41 of 1967), and that you have thereby committed an offence under section 27(5)(a) ...

The above charge states clearly and specifically which one of the offences under s. 27(5) of the Act was committed by the accused person whereby the offence is of taking part in the assembly, meeting or procession which takes place without a license issued under s. 27(2) of the Act ("the third offence").

In the present case before this court it is found that the words used in the charge framed are very wide in their terms and the applicant could not know which of the 15 offences under s. 27(5) of the Act as hereinbefore classified is said to have been committed by the applicant. In the circumstances the applicant will be prejudiced in the preparation of his defence and that the applicant will not be able to know whether the provisions of ss. 27(5A), 27(5B) and/or 27(5C) of the Act would apply to his case. It has to be expressed here that an accused person on trial in the interest of justice must be made to fully and truly understand the nature of the charge he is asked to plead to. On this point I only need to restate what has been said by his Lordship K.C. Vohrah J in the case of *PP v. Margarita B. Cruz* [1988] 1 MLJ 539 at p. 539 as follows:

> It behoves all magistrates and presidents to scrutinize the charges, to read the provision of the statute under which the charge is framed, to understand the constituent ingredients of the charge, to know the nature of punishment and appreciate the gravity of the charge. If the charge is defective or badly framed, the Magistrate should point out the defects and request the prosecuting officer to amend the charge as the accused should truly understand the nature of the charge he is asked to plead to.

Conclusion

I am mindful of the fact that the powers of revision must be exercised judicially and within the limits and in the spirit of legislation. (See the case of *Liaw Kwai Wah v. PP* [1987] 1 CLJ 35). The principles which should guide the courts in the exercise of the revisionary powers have been clearly set out in the case of *Emperor v. Lachiram* I LR 28 Bom 553 wherein Jenkins CJ *inter alia* had this to say:

> ... this controlling power of the Court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly.

It is to be noted that the relevant provisions of the CPC and the Police Act 1967 have been enacted with the primary purpose of ensuring a proper conduct of the prosecution of an offence and to prevent injustice meted out on any party. In the context of the present application it is my finding that there has been a non-compliance of the requirement of the law with regard to the consent in writing of the Public Prosecutor issued under s. 27C(1) of the Act

and with regard to the charge framed against the accused for not specifying which of the offences as provided by the said s. 27(5) of the Act had been committed by the applicant. Even assuming that the said consent to prosecute as in exh. "GKP14" is found to be in order in that there is no requirement under the Act that the material particulars of the offence must be specifically stated or particularised in the consent, I would still make a finding that the charge framed against the applicant as an accused person is defective and bad in law and on this ground alone I would have granted the order sought for by the applicant. I have already perused the record of the proceedings of the trial magistrate relating to the trial of the applicant and I am satisfied that the learned magistrate had erred in law and in fact in dismissing the two points of preliminary objection raised by the learned defence counsel of the applicant. In the circumstances of the case I hereby grant the orders sought for by the applicant under this application. The applicant is hereby directed to appear before the learned trial magistrate on a date to be fixed by the said Magistrate Court for the learned trial magistrate to make an order of discharge not amounting to acquittal of the applicant on the charge framed against the applicant on the grounds hereinbefore given by this court. The prosecution is at liberty thereafter to rectify the said defects in order for it to mount a proper conduct of the prosecution of the applicant under the relevant offence as provided under s. 27(5) of the Act.